In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 1143

EUNICE C. MADISON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner, a non-veteran, was formerly employed by the Department of the Army at Verona, Italy, as a civilian "Management Analyst," GS–9. She was removed from that employment because of her refusal to accept reassignment to another position within that same job classification at the same grade and pay and at the same overseas post. Petitioner asks the Court to review a decision of the Court of Claims upholding her removal,[1] which had previously been sustained

[1] *Madison* v. *United States*, 174 Ct. Cl. 985, decided March 18, 1966 (Pet. App. A), rehearing denied October 14, 1966. This Court extended the time in which to petition for certiorari to March 13, 1967. The petition was filed on that date.

259-825—67

in proceedings before the Army's civilian-personnel grievance system and the Civil Service Commission. We submit that the decision of the Court of Claims is clearly correct and that further review in this Court is not warranted.

Petitioner had originally been employed at Leghorn, Italy, as a GS–9 Management Analyst with the Army's Southern European Task Force (SETAF). In December of 1956 she was separated from that position on the ground that she had refused to follow her work to Verona, Italy. The Appeals Examining Office of the Civil Service Commission reversed this dismissal as violative of petitioner's procedural rights and ordered her restored to her employment with back pay. The employing agency (SETAF) appealed to the Commission's Board of Appeals and Review, but, in October of 1957, higher authority in the Army ordered the appeal withdrawn and acquiesced in the Examiner's decision. During the pendency of those proceedings, however, SETAF had hired a replacement for petitioner. For this reason the Army offered to restore petitioner to a GS–9 Management Analyst position with SETAF but at Verona, Italy, which petitioner accepted in February of 1958.[2]

The position at Verona in which petitioner had been placed was only of a temporary nature. In August 1958 a permanent GS–9 Management Analyst position in SETAF fell vacant at Leghorn, Italy, where petitioner had originally been employed. This position was promptly offered to her, but petitioner declined

[2] Petitioner was also given the appropriate amount of back pay.

to accept it for reasons of personal convenience. In November 1958, another permanent GS–9 Management Analyst position became available in Verona, but in another SETAF office. The agency offered petitioner this position, too, but again she declined to accept it. However, the Army decided to abolish the temporary Management Analyst position held by petitioner and to transfer her to the permanent position in Verona. While there was another GS–9 Management Analyst employed with petitioner, she was selected for transfer because she was concededly the junior employee. When petitioner refused to accept the reassignment she was dismissed in January of 1959.

Petitioner thereafter prosecuted an appeal from that dismissal through the Army civilian-personnel grievance system and to the Civil Service Commission. Both agencies upheld the administrative action and petitioner brought suit in the Court of Claims for back pay. The gravamen of her complaint was that she had never been properly restored to her position after her 1956 discharge and could not, therefore, be dismissed until that restoration was accomplished. The Court of Claims disagreed, pointing out that the Army had in fact offered to restore her to a fully comparable GS–9 Management Analyst position at Leghorn in August of 1958, which she had deliberately rejected. It held further that the Army's action in proposing to transfer her to another position in Verona was in full accord with the pertinent regulations.

As the considered opinion of Judge Davis makes plain, petitioner was accorded the rights afforded her under the governing statutes and regulations. It cannot be said that the Army's decision to transfer petitioner to a new position in the same occupational specialty, at the same grade level, at the same rate of pay, and in the same city, was an arbitrary one. In the circumstances, this case presents no occasion for examination by this Court.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

APRIL 1967.

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